

EDITOR'S NOTE: Corrections noted in an April 29, 1985, Erratum have been incorporated at page 383.

JOHN P. BROGAN

IBLA 84-752

Decided March 26, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-85759.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error. Where appellant fails to show error, the determination will be upheld.

APPEARANCES: Richard P. Cullen, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

James P. Brogan appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 11, 1984, which rejected

noncompetitive offer to lease for oil and gas W-85759. ^{1/} The decision provides that "[t]he District Manager of our Casper office advised in a memorandum dated December 14, 1983, that the lands in this offer are entirely within an undefined addition to an unnamed, undefined Known Geological Structure [KGS] which was effective December 9, 1983." The BLM decision rejected appellant's offer under 43 CFR 3112.5-2(b) which provides that an offer shall be rejected if the lands encompassed by the offer are determined to be within a KGS of a producing oil and gas field prior to the time a lease is issued.

In his statement of reasons for appeal, appellant notes that although the lands are within, and have been committed to the Wardell Unit area they are not within a participating area and, therefore, are not automatically presumed productive of oil and gas. Appellant states that the lands sought for leasing are more than "three miles from production to the east, four miles from a dry hole to the north, at least four miles from any well to the south and more than ten miles from any well to the west." Appellant contends that it is impossible to justify a determination that the lands sought for leasing are within a trap in which an accumulation of oil and gas has been discovered by drilling as is required by 43 CFR 3100.0-5(1) because "[a] trap by definition and common sense requires closure. With no wells within four to ten miles of these lands on three sides, it is utterly unreasonable to determine that a trap exists covering these lands."

Appellant further objects to the classification of the KGS as being an "undefined addition to an unnamed, undefined Known Geological Structure," contending that "it is impossible to create an addition to an area that has no boundaries, there must be a known starting place in order to establish an addition."

In an answer filed on September 28, 1984, counsel for BLM contends that the record shows BLM's determination to be supported by substantial evidence which completely refutes appellant's "generalized assertions." In his response to BLM's answer filed January 30, 1985, appellant refers to a Narrative Geologic Report dated December 9, 1983, which describes the KGS, noting that this report states that "no gas/water contact could be mapped, but instead the Wardell Unit Boundaries were utilized as the new KGS boundary." Appellant contends that:

This was completely erroneous since there must be a trap to delineate KGS lands and a trap cannot exist for structurally controlled accumulations without an oil-water or gas-water interface or contact. Without such it is impossible to reasonably infer that a producible reservoir underlies the 24,590.33 acres of Federal lands which were designated KGS by Memorandum dated December 14, 1983 (Exhibit E). Thus it is apparent that this designation was made in error and should be revoked.

^{1/} The lease offer covers a 40-acre tract described as follows: Sec. 2, NE 1/4 SW 1/4, T. 50 N., R. 96 W., sixth principal meridian, Big Horn County, Wyoming. The offer was tendered as a result of appellant being found to be the first-qualified applicant for parcel WY 449 in the May 1983 simultaneous offering.

Response at 3-4. In addition, appellant advances the following argument in his response brief:

Appellant will show that, not only was there no substantial evidence of record supporting the determination, but also there was no evidence of record whatsoever. This is abundantly clear from [counsel for BLM's] letter of November 1, 1984, to Appellant's counsel (Exhibit "A") wherein he states that the information requested by counsel; that is, upon what was the KGS determination based, was submitted under proprietary restrictions by oil companies and is, therefore, confidential. Appellant does not dispute the right of companies to restrict submitted information in this manner, but does strenuously dispute the BLM's assertion that such is "evidence of record" which can be used to show that "the BLM had a rational basis for the determination". The term "evidence of record" is self-explanatory. It can only mean evidence which is of record and which is available to all parties, not just the BLM.

Response at 1.

However, in its reply, filed with this Board on March 1, 1985, BLM noted that, in response to an order by this Board, on January 3, 1985, BLM had mailed the data and reports it used in making the KGS determination to appellant. Therefore, appellant's argument on this issue is moot.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding pursuant to 43 CFR 3120. 30 U.S.C. § 226(b) (1982). Thus, if lands embraced in a noncompetitive offer are designated as being within a KGS before issuance of a lease, the noncompetitive lease offer must be rejected as to those lands. Lida R. Drumheller, 63 IBLA 290 (1982); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982); Guy W. Franson, 30 IBLA 123 (1977); 43 CFR 3112.5-2(b). This Department has no discretion under the law to issue a noncompetitive lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

The selection of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant, but only establishes priority of filing. See Guy W. Franson, supra. A priority applicant's timely submission of the properly signed lease and required rental constitutes an offer to lease. The signing of this offer by the authorized BLM officer is the act that constitutes acceptance of the applicant's offer and creates a binding contract. The date the authorized officer signs the lease is the date of lease issuance and the determinative date with respect to the rights of the offeror. Hepburn T. Armstrong, 72 IBLA 329 (1983). Thus, delay between the selection of appellant's application and the declaration that the area was within a KGS does not aid appellant. As first priority applicant he acquired no vested right to a lease, but only an inchoate right to receive a lease should such be issued. Angelina Holly Corp. v. Clark, 587 F. Supp. 1152 (D.D.C. 1984).

[2] The regulation, 43 CFR 3100.0-5(l) defines KGS as "technically the trap in which an accumulation of oil or gas has been discovered by drilling

and determined to be productive, the limits of which include all acreage that is presumptively productive." Inclusion of land in a KGS, however, does not mean that the land itself is currently producing or has been determined to be productive of oil or gas, nor does it predict future productivity. Land may be included in a KGS because of geologic evidence indicating that a producing oil or gas deposit extends under the land such that the land is considered to be "presumptively productive." The boundaries of a KGS are defined for administrative purposes and cannot be taken as showing with absolute accuracy the extent, in each instance, of the geologic structure producing the oil or gas. See, e.g., Robert G. Lynn, 61 IBLA 153 (1982).

In Vernon and Rita Benson, 48 IBLA 64 (1980), we discussed the differences between defined and undefined KGS" and the reasons for such determinations as follows at pages 68-69:

Recognizing the difficulty of determining a known geologic structure, Survey published its Circular 419 [E. A. Finley, The Definition of Known Geologic Structures of Producing Oil and Gas Fields (1959)] * * * explaining its determination procedures. Known geologic structures are of two kinds: undefined, as in the instant appeal, and defined. "The essential difference between defined and undefined known geologic structure definitions, and the reason therefor, is that the formality and detail in the defined procedure does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in current administration of the leases and lease applications." Circular 419, supra at 5.

An informal procedure for classifying lands on the known geologic structure of a producing oil and gas field is necessary if Survey is to fulfill the terms of 30 U.S.C. § 226 (1976) requiring such lands to be leased on a competitive basis. This need is discussed in Circular 419, supra at 6:

Generally, the undefined structure procedure applies when there is a discovery on or near a Federal lease and an immediate determination is needed for guidance of the manager in administering the rental and extension provisions of the particular lease or leases in the vicinity of the discovery. It is also applied in areas where the scope and pace of development are rapid, and where the preparation and publication of a map would be misleading because, in a matter of a day or days after publication, or even on the date of publication, the boundaries are subject to change. * * *

The undefined structure procedure is also used with respect to a field or area where there are but one or two tracts of Federal lands, and a determination can be made as to such tracts without the necessity of outlining the entire structure. [Emphasis in original.]

The Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon the technical expert's reasoned opinion. An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are situated within the KGS of a producing oil or gas field has the burden of showing by a preponderance of evidence that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984).

We disagree with appellant's critique of the narrative geologic report. First, in his response to BLM's answer appellant correctly quotes the written report, which states: "Due to complexities in reservoir control, no overall gas/water contact could be utilized in determining the KGS boundary." Appellant then characterizes this statement as "no gas/water contact could be mapped." (Emphasis added). Secondly, the geologic report states: "This unnamed KGS is associated with a northwest trending fold known as the Worland Anticline. The Wardell Unit is based on this structure." 2/ In its March 1985 reply, BLM states that:

The limit of a reservoir is not always based solely on an oil-water contact. A trapping mechanism is needed to stop and accumulate oil or gas. In the case of many stratigraphic traps the limit of the reservoir is determined by lithologic variances producing impermeable zones behind which oil or gas accumulates. Examples of lithologic or stratigraphic traps include formation pinchants [pinchouts?] or thinning and intrusives such as igneous or sedimentary dikes. Structural features such as faults can also trap migrating fluids. Any of these trapping mechanisms would effectively determine a limit to the reservoir.

Reply at 4. Further, BLM states that:

The BLM recognizes that unit boundaries do not necessarily conform to KGS boundaries. It also realizes that unit boundaries may include a larger area than would normally be considered "presumptively productive" as used in the KGS definition. But nowhere in the definition of a unit or a KGS does it state or infer that the two boundaries are mutually exclusive. In the case of the Wardell Unit the expanded KGS and existing unit boundaries do in fact coincide. The BLM expanded the Unnamed Undefined KGS in question by using the best geologic data available at the time to determine the "presumptively productive" limits of the reservoir. That data fully supports the coincidence.

Reply at 3-4.

2/ An anticline is defined as:

"A subsurface geological structure in the form of a sine curve; that is, the formation rises to a rounded peak. Anticlinal structures in sedimentary rocks are good prospects for drilling, since any oil in the deposit will normally rise to the highest point in the structure. Such reservoirs are called anticlinal traps."

Williams and Meyers Oil and Gas Law, vol. 8 at 42 (1984).

After a review of the case file, pleadings, and documents submitted by the parties, we conclude that appellant has not met the burden of showing that the KGS determination is in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

